NOTES OF CASES.

Judgment—Collateral Attack Based on Want of Service—Contradicting Record.—Action by the plaintiff to remove the clouds cast on his title to land by two judgments rendered against his vendor. As a ground of relief the plaintiff alleged that the latter was not served with notice of suit. The records of the judgments contained recitals of service. Held, this was a collateral attack and that the recitals of service in the records were conclusive collaterally. Estey & Camp et al. *v.* Williams (1911), — Tex. Civ. App. — 133 S. W. 470.

In view of the recent Virginia case of Sutherland *v.* People's Bank, 69 S. E. 341, XVI Va. Law Reg. 744, and the annotation thereto, this case and the comment of the Mich. Law Review, vol. 9, p. 527, reaching a contrary conclusion, will be of interest. We copy.

"Few questions in the law of judgments are more vital or interesting than that involved in the principal case. To estop an individual from showing (except in a direct proceeding), that he has not had his day in court strikes the mind at first blush as being slightly out of harmony with our preconceived ideas of right and liberty. But that such is the law is settled by an overwhelming weight of judicial authority. Vanfleet, Collateral Attack, § 468. The recitals of service or other jurisdictional facts in the records of courts of inferior or limited jurisdiction are generally held unimpeachable. Seefeld *v.* Duffer, 179 Fed. 214; Hume *v.* Conduitt, 76 Ind. 598; while the contrary has been held the law by the courts of a few states. Salladay *v.* Bainhill, 29 Iowa 555; Jones *v.* Terry, 43 Ark. 230. The recital of jurisdictional facts, including service, in the record of a domestic court is almost universally held to be conclusive, collaterally. Rumfelt *v.* O'Brien, 57 Mo. 569; Western Lumber & Mill Co. *v.* Merchants Amusements Co., — Cal. —, 108 Pac. 659. Despite this formidable array of authority the contrary doctrine has been accepted as the law by courts of the highest respectability. Goudy *v.* Hall, 30 Ill. 109. According to the latter view the records are accepted as prima facie true. Ferguson *v.* Crawford, 70 N. Y. 253; Holly *v.* Munro, 55 Wash. 311, 104 Pac. 508. Many arguments are advanced concerning the relative merits of the two conflicting doctrines. Affirmatively, it is asserted that a denial of the existence of such a conclusive presumption in favor of a record's verity would bring disrepute on our judiciary because of the consequent uncertainty of interests and titles based on judicial proceedings. Also, that there is rarely any merit in a collateral attack, and therefore the court should discountenance them in all cases. But against this it is said that a man should not have his rights determined without an opportunity of being heard. Nor that he should be bound be-

cause of an inviolable presumption that a court is powerless to assert a fiction. But the conclusion in the principal case is in full accord with the generally prevailing view."

Who Is a Farmer?—The main issue in Robertson *v.* Dwyer, 184 Federal Reporter, 880, is whether or not appellee is a farmer. Appellants filed a petition to have him adjudged a bankrupt, and he pleaded his exemption from the bankruptcy act because he was a farmer. The facts respecting his occupation are, namely: He was born and raised on a farm. He had acquired considerable farm land, having one farm of 160 acres in Illinois on which he dwelt. Here he raised corn and oats on 46 acres and grass for feeding purposes on the balance. His stock consumed a great deal more of grain than he was able to raise for them, so he was required to buy about 8,400 bushels a year. A very high proportion of cattle were purchased and raised on the farm. When his stock became fattened he would sell them to growers or ship them to Chicago. The question is: Was he engaged in the business of dealing in stock or in farming? If the former, he was within the bankruptcy act; if the latter, he was exempt. The Circuit Court of Appeals holds that "instead of being a 'dealer' appellee was something like a manufacturer who takes raw materials ('feeders') and converts them into finished product ('fat beef cattle')," and concludes that conducting a "stock farm," as well as conducting a "grain farm," is farming, so appellee was exempt.

MISCELLANY.

Mr. Justice Harlan's Dissenting Opinion in the American Tobacco Company Cases.—I concur with many things said in the opinion just delivered for the court, but it contains some observations from which I am compelled to withhold my assent.

I agree most thoroughly with the court in holding that the principal defendant, the American Tobacco Company and its accessory and subsidiary corporations and companies, including the defendant English corporations, constitute a combination which, "in and of itself, as well as each and all of the elements composing it, whether corporate or individual, whether considered collectively or separately," is illegal under the Anti-trust Act of 1890, and should be decreed to be in restraint of interstate trade and an attempt to monopolize and a monopolization of part of such trade.

The evidence in the record is, I think, abundant to enable the court to render a decree containing all necessary details for the